



**DELPHIC
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Date May 12, 2020

Walpole Massachusetts
135 School St.
Walpole, MA. 02081

ATTN: Mr. John Lee
Chairman, Zoning Board of Appeals

RE: FEES
Moose Hill Condominiums

Dear Chairman Lee,

We understand in the case of a Request for a Comprehensive Permit that the intent of fees established by the town to be paid by the applicant shall be used to augment any expenses incurred by the Zoning Board of Appeals for “Consultant Reviews” and / or other costs.

Pursuant to the terms of 760 C.M.R 56.05 (5) (a), so called “Consultant Review” first depends upon a determination by the board that it requires technical advise... “unavailable from municipal services” (emphasis added). The permissible types of technical advise are then specifically delineated as “civil engineering, transportation, environmental resources, design review of buildings and site and.... review of financial statements”. Upon such a formal determination the board is then directed to “work cooperatively with the applicant to identity appropriate consultants and scopes of work and to negotiate payment of part or all of the consultant fees by the Applicant.”

Moreover, the board may impose a review fee similar to the planning board fees charged for a subdivision of similar size. The consultant may review studies prepared on behalf of the Applicant and in connection with the Applicant’s specific project, and any fees charged may not exceed those of “similar consultants in the area.”

The fees being submitted shall not and cannot be used for legal fees. The portion of the Regulation that addresses legal fees provides an expressed probation against imposition of legal fees for general presentation of the board. In the June 25, 2007, case issued by the Housing Appeals Committees Autumnwood decision, that decision appears to inappropriately ignore the

plain distinction between attorneys and other technical consultants drawn by the regulation, it to raises significant concerns. In the Autumnwood case the committees expansive reading of the Regulation limits reimbursement of attorney fees to “only fees for technical review of legal documents prepared by the developer, review of legal opinions prepared by the developer’s counsel or other similar peer review”. However, since that decision date the Department of Housing and Community Development had issued the new Comprehensive Permit Regulations **760 CMR 56 dated February 28, 2008, which once again expresses probation against imposition of legal fees for general representation by the board.**

Therefore, at a bare minimum, before any payment is made for legal fees the board needs to receive approval from the applicant and should provide sufficient information to determine whether the fees to be charged to them are similar to those charged by other attorneys in the area and a means to which meaningfully differentiate the attorneys time charges for general representation of the town in its capacity as legal counsel from the proposed charges for any so called “technical review” that may prove to be necessary. The necessity of “detail evidence with respect to the services provided” for any meaningful subsequent review of the proposed charges is, of course, made plain by Autumnwood.

The town should also be made aware of the strong likelihood of waiver of any attorney-client privileges between the town and their counsel with respect to the work performed by counsel for which reimbursement is sought. Such a waiver is supported by, among other factors, the requirement under 760 C.M.R. 56.05 (5)(b)(3) that all written results or reports muse be made part of the record before the board.

The foregoing is not intended by the applicant to suggest any unwillingness, under the appropriate circumstances, to provide the board with reimbursement of reasonable and necessary outside consultant’s fee, rather, the applicant is merely concerned that it could be asked to bare cost for which is not responsible.

Should you have any questions or need anything further, please do not hesitate to contact me at your convenience.

Thank you.

Sincerely,

Paul E. Cusson
Managing Member
DELPHIC ASSOCIATES LLC
PEC/llg